

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

Larry Lewis,  
Petitioner

v.

Case No. 1:08-cv-114

Warden, Toledo Correctional  
Institution,<sup>1</sup>  
Respondent

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**ORDER ADOPTING REPORT AND RECOMMENDATION**

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This matter is before the Court on the Magistrate Judge's Report and Recommendation filed June 5, 2009 (Doc. 11).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). As of the date of this Order, no objections have been filed to the Magistrate Judge's Report and Recommendation.

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636, we find the Magistrate Judge's Report and Recommendation to be correct.

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<sup>1</sup>Since filing the petition, petitioner has been transferred to the Toledo Correctional Institution. (Doc. 9). Therefore, the proper respondent in this matter is the Warden of the Toledo Correctional Institution.

Accordingly, **IT IS ORDERED** that the Magistrate Judge's Report is **ADOPTED** as follows:

1) Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DENIED** with prejudice.

2) A certificate of appealability will not issue with respect to petitioner's claims regarding the improper use of the coroner's report alleged in Grounds One and Three of the petition and the witness intimidation evidence alleged in Ground One of the petition, which this Court has concluded are waived and thus barred from review on procedural grounds because under the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), "jurists of reason would not find it debatable whether this Court is correct in its procedural ruling" as required under the first prong of the *Slack* standard.<sup>2</sup>

3) A certificate of appealability also will not issue with respect to the remainder of the petition because petitioner has failed to make a substantial showing of the denial of a constitutional right based on these claims. See 28 U.S.C. § 2253(c); Fed.R.App.P. 22(b).

4) This Court certifies that pursuant to 28 U.S.C. § 1915(a)(3) an appeal of this Order would not be taken in good faith, and therefore **DENIES** petitioner leave to appeal *in forma pauperis*. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6<sup>th</sup> Cir. 1997). Petitioner remains free to apply to proceed *in forma pauperis* in this Court of Appeals.

**SO ORDERED.**

Date: June 30, 2009

s/Sandra S. Beckwith  
Sandra S. Beckwith, Senior Judge  
United States District Court

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<sup>2</sup>Because this Court finds that petitioner has not met the first prong of the *Slack* standard, it need not address the second prong of *Slack* as to whether "jurists of reason" would find it debatable whether petitioner stated a valid constitutional claim. See *Slack*, 529 U.S. at 484.